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No. ~~20001~~

20384

IN THE
United States Court of Appeals
For the Ninth Circuit

BAKER & FORD Co.,
a corporation, and
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
a corporation,
Appellants,

v.

UNITED STATES OF AMERICA
for the use and benefit of
URBAN PLUMBING & HEATING Co.,
a corporation,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR ALASKA

HONORABLE RAYMOND E. PLUMMER, *Judge*

PETITION FOR REHEARING

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IN THE
United States Court of Appeals
For the Ninth Circuit

No. 20834

BAKER & FORD Co.,
a corporation, and
THE FIDELITY AND CASUALTY COMPANY OF NEW YORK,
a corporation,
Appellants,

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UNITED STATES OF AMERICA
for the use and benefit of
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UPON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR ALASKA

HONORABLE RAYMOND E. PLUMMER, *Judge*

PETITION FOR REHEARING

Appellants-Petitioners respectfully petition the court for a rehearing in the above-entitled action on the following grounds:

I

FINDING IX THROUGH XVI (R. 85-90). No award should have been made for "acceleration" as the evidence *without conflict* showed that the undertaking of appellee

to meet the scheduled dates for completion was purely voluntary on appellee's part and resulted from an agreement between appellee and appellant to complete as scheduled "if possible."

II

FINDING XVI (R. 88-9), EXHIBIT 29, SCHEDULE 1. Even assuming a finding of "acceleration," the quantum under this schedule should not have included a price differential based on six 9-hour weeks, "acceleration" having ostensibly commenced May 1st, 1960—the six 9s not being employed until August 7, 1960, and then as the result of a plumber's walkout, rather than because of acceleration (App. Br. 34, 35).

III

FINDING XVI (R. 88-9), SCHEDULE 2, EXHIBIT 29. The amount awarded here was \$1,361.72 for small tool expense based on 2½ per cent of the claimed increased payroll of \$54,468.86 (Tr. 198-9). The District Court reduced the claimed amount from \$54,468.86 to \$30,389.40 (R. 89). Two and one-half per cent of the latter figure would be \$759.73, which would be the proper amount (App. Br. 39, 40).

IV

FINDING XVI (R. 88-9), SCHEDULE 6, EXHIBIT 29—Allowance for double-time pay, \$5,833.50. This represents a duplication of the increased cost of double-time pay reflected in Schedule 1 of Exhibit 29. The District Court made its computation based on 16,212 hours, which from an analysis of Exhibits Z and LL includes

all straight time, time and a half and double-time (the latter two being shown as "O.T."). The result is to allow for double-time hours under this schedule as well as allowing the increased costs of the double-time hours under Schedule 1 (App. Br. 43, 44, 45).

V

FINDING XVI (R. 88-9), SCHEDULE 8, EXHIBIT 29. Increased camp subsistence cost, \$12,600.00. This schedule is not supported by any evidence, conflicting or otherwise, as to its source (other than it was furnished to Mr. Urban by Mr. Way), nor as to what it was incurred for, or why or when, or its reasonableness. (App. Br. 46, 47, 48).

The District Court in its Memorandum Decision, however, as to this item (R. 71-6), reduced the claimed amount to \$7,356.00 but through some error in transmission included the amount of \$12,600 in its findings.

Respectfully submitted,

MIKE STEPOVICH
BRUCE T. RINKER

Attorneys for Petitioners

CERTIFICATE

The undersigned attorneys for petitioner herein hereby certify that in their judgment the foregoing Petition for Rehearing is well founded and that it is not interposed for delay.

MIKE STEPOVICH
BRUCE T. RINKER

Attorneys for Petitioners

